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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
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12 MONTEREY REGIONAL WATER
13 POLLUTION CONTROL AGENCY, a Joint
Powers Agency,

14 Plaintiff,

15 v.

16 CH2M HILL, INC; CH2M HILL
17 COMPANIES, LTD.; and DOES 1 through 20,
Defendants.

18 No. C-05-04850 RMW
19

20 ORDER GRANTING MOTION TO DISMISS
21 PLAINTIFF'S THIRD CAUSE OF ACTION
22 FOR BREACH OF IMPLIED WARRANTY
23 [Re Docket Nos. 12, 15, 16]

24 Defendants CH2M Hill, Inc. and CH2M Hill Companies, Ltd. move under Federal Rule of
25 Civil Procedure 12(b)(6) to dismiss plaintiff Monterey Regional Water Pollution Control Agency's
26 third cause of action, for breach of an implied warranty. For the reasons set forth below, the court
27 grants defendants' motion.

28 **I. BACKGROUND**

29 The following facts are taken from the complaint, which the court generally must accept as
true on a motion to dismiss: Plaintiff Monterey Regional Water Pollution Control Agency
30 ("MRWPCA") hired CH2M Hill California Inc. for assistance in the construction of a wastewater
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33 WARRANTY—No. C-05-04850 RMW
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1 treatment plant. CH2M Hill California specified copper pipe for a part of the plant. The pipe
 2 ruptured, causing damage to the plant and necessitating repairs and replacement of the copper pipe.

3 MRWPCA sued CH2M Hill, Inc. and CH2M Hill Companies, Ltd. (collectively "CH2M") as
 4 CH2M Hill California's successors in interest to the contract with MRWPCA. The complaint
 5 contained three causes of action: negligence, breach of contract, and breach of implied warranty.
 6 CH2M moves to dismiss the claim for breach of implied warranty.

7 II. ANALYSIS

8 The contract specifies that it is governed by California law, and neither party challenges the
 9 application of California law. The dispute is whether, under California law, the plaintiff may
 10 maintain a cause of action against the defendants for breach of an implied warranty for the
 11 defendants' design work. "[T]he well settled rule in California is that where the primary objective of
 12 a transaction is to obtain services, the doctrines of implied warranty and strict liability do not apply."
 13 *Allied Props. v. John A. Blume & Assocs., Eng'rs*, 25 Cal. App. 3d 848, 855 (1972).

14 Plaintiff claims that "CH2M sold it a wastewater treatment plant." Opp'n at 2. However, this
 15 claim is belied by the parties' contract, which is attached to the complaint as Exhibit A. Plaintiff
 16 claims that its assertions that CH2M was involved in "building" and the "development" of the plant
 17 are sufficient to prevent dismissal of its claim for breach of implied warranty because it has alleged
 18 that CH2M sold it a plant. The court need not decide if, absent consideration of the contract,
 19 plaintiff has sufficiently stated a cause of action for breach of implied warranty against CH2M.
 20 While a court ordinarily must, on a motion to dismiss, accept the allegations of the complaint as
 21 true, a court may properly consider a contract attached to a complaint and disregard allegations in
 22 the complaint contradicted by the contract. *Spreewell v. Golden State Warriors*, 266 F.3d 979, 988
 23 (9th Cir. 2001).

24 The parties' contract makes it clear that CH2M provided only services, not property, to
 25 plaintiff. According to the contract, CH2M "is employed to render a professional service only."
 26 Compl., Ex. A, § XII. Representative responsibilities contractually assigned to CH2M are document
 27 review, assisting plaintiff in obtaining permits, designing the facility, writing operating manuals, and
 28 analyzing bids. *Id.* § IV(B)-(D). The primary objective of the parties' contract is to obtain services,

1 thus the doctrine of implied warranty is inapplicable. *Allied Props.*, 25 Cal. App. 3d. at 855.

2 Plaintiffs' cause of action for breach of implied warranty thus must be dismissed.

3 Plaintiff may attempt to amend its complaint to state a viable claim for breach of implied
4 warranty. *See Fed.R.Civ.P. 15(a)*. To do so, plaintiff must set forth facts that show CH2M was
5 engaged in building or that additional contracts covered building by CH2M.

6 **III. ORDER**

7 For the foregoing reasons, plaintiff's cause of action for breach of implied warranty is
8 dismissed.

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11 DATED: 2/17/06

12 /s/ Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program.

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10 **Dated:** 2/21/06

11 /s/ JH
12 **Chambers of Judge Whyte**

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